

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
BAY CHEVROLET, INC.,

Plaintiff,

-against-

GENERAL MOTORS CORP., ARGONAUT  
HOLDINGS, INC., and KENNETH BRODLIEB,

Defendants.

**MEMORANDUM AND ORDER**  
**ADOPTING REPORT AND**  
**RECOMMENDATION**

08-CV-233, 08-CV-4631  
(KAM) (JMA)

X

-----  
**MATSUMOTO, United States District Judge:**

On January 15, 2008, plaintiff Bay Chevrolet Inc. ("plaintiff") commenced its first action (No. 08-CV-233, the "First Action") against defendants General Motors Corporation ("General Motors") and Argonaut Holdings, Inc. ("Argonaut Holdings") in New York Supreme Court, alleging, *inter alia*, breach-of-contract claims. (First Action, ECF No. 1, Notice of Removal, at 2.) On September 23, 2008, plaintiff commenced a second action (No. 08-CV-4631, the "Second Action") against General Motors and Kenneth Brodlieb ("Brodlieb") in New York Supreme Court, asserting claims similar to those in the First Action, based on the same facts and circumstances. (Second Action, ECF No. 1, Notice of Removal, at 2.) Defendant General Motors removed both actions to this court on January 16, 2008,<sup>1</sup> and November 14, 2008, respectively. Before the court is

---

<sup>1</sup> Judge Gleeson was the District Judge originally assigned to hear the First Action, but on September 10, 2008, the case was reassigned to the undersigned.

Magistrate Judge Azrack's Report and Recommendation that both of plaintiff's actions be dismissed with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (See First Action, ECF No. 49, Report & Recommendation, dated 8/11/2011; Second Action, ECF No. 31, Report & Recommendation, dated 8/11/2011.)

As explicitly noted at the end of the Report and Recommendation, any objections to the Report and Recommendation were to be filed within fourteen days of August 11, 2011. (*Id.* at 4.) According to a notation entered on the docket sheet, copies of the Report and Recommendation were sent via first-class mail, postage pre-paid, to plaintiff's two last known addresses and to plaintiff's "Chairman or Chief Executive Officer," Robert A. Benjamin, on August 12, 2011. (See First Action, ECF No. 50, Affidavit/Affirmation of Service, dated 8/12/11; Second Action, ECF No. 32, Affidavit/Affirmation of Service, dated 8/12/11.) The period for filing objections has now expired, and no objections to Magistrate Judge Azrack's Report and Recommendation have been filed.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and

---

(See First Action, Docket Entry dated 9/10/2008.)

Recommendation has been filed, the district court "need only satisfy itself that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Having reviewed Magistrate Judge Azrack's well-reasoned and thorough Report and Recommendation, the record before the court which indicates multiple extensions for the corporate plaintiff to obtain counsel and warnings of dismissal for failure to do so, and the relevant case law, the court finds that there is no clear error in the Report and Recommendation and hereby affirms and adopts the Report and Recommendation in its entirety as the opinion of the court. Accordingly, plaintiff's actions, 08-cv-233 and 08-cv-4631, are dismissed with prejudice for failure to prosecute.

\  
\  
\  
\  
\  
\  
\  
\  
\  
\

\

Defendant General Motors is directed to serve a copy of this Memorandum and Order on plaintiff and to file a declaration of service by October 5, 2011, and the Clerk of the Court is respectfully ordered to enter judgments in favor of defendants and close both cases.

**SO ORDERED.**

Dated:    October 3, 2011  
          Brooklyn, New York

\_\_\_\_\_/s/  
Kiyo A. Matsumoto  
United States District Judge